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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 PEOPLES BANK,

10 Plaintiff,

11 v.

12 BLUEWATER CRUISING LLC, *et al.*,

13 Defendants.
14

Case No. C12-00939RSL

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTIONS *IN LIMINE*

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16 This matter comes before the Court on “Defendants’ Motions *in Limine*” (Dkt. # 101).
17 Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court
18 finds as follows:

19 **1. Expert Testimony of Colin Rees**

20 Because the Court recently dismissed all claims and counterclaims related to the value of
21 the S/V Maamalni (the “Vessel”) in its Order Regarding Cross-Motions for Summary Judgment,
22 dkt. # 110, the Court DENIES as moot Defendants’ request to exclude testimony regarding Mr.
23 Rees’ supplemental expert report related to the value of the Vessel.

24 **2. Testimony of Pauline Barratt**

25 Defendants seek to prohibit Ms. Barratt from offering expert testimony regarding New
26 Zealand law because Plaintiff failed to disclose Ms. Barratt pursuant to the Court’s scheduling
27 order and the Federal Rules of Civil Procedure governing the disclosure of expert witnesses.

1 Dkt. # 101 at 6. Because the only remaining claim for trial is Defendants' counterclaim for
2 conversion of the property on the Vessel, Defendants' request to exclude Ms. Barratt from
3 offering expert testimony regarding New Zealand law is DENIED as moot.

4 Defendants also argue that Ms. Barratt should be precluded from providing testimony as a
5 fact witness because the testimony is irrelevant and cumulative. The Court disagrees. Ms.
6 Barratt was directly involved in the negotiations regarding the property on the Vessel, including
7 Ms. Nettleship's requests to retrieve certain items from the Vessel and the procedures the parties
8 used to determine which items were covered by their agreement, both of which are relevant to
9 Defendants' remaining counterclaim. Defendants' argument that her testimony is cumulative is
10 equally unavailing. Unlike Mr. Guildner, Ms. Barratt has firsthand knowledge of the arrest of
11 the Vessel in New Zealand and the subsequent distribution of property from the Vessel.
12 Therefore, the Court DENIES Defendants' request preclude Ms. Barratt from testifying as a fact
13 witness.

14 **3. References to Defendants' Default on the Loan**

15 The Court DENIES Defendants' motion *in limine* seeking to prohibit Plaintiff from
16 referencing or commenting on Defendants' default on the loan. Contrary to Defendants'
17 contention, the facts and circumstances surrounding the loan and the default are relevant to and
18 probative of whether Plaintiff unlawfully interfered with Defendants' possession of property on
19 the Vessel at the time of the repossession. Furthermore, any risk of prejudice is minimal here
20 because this is a bench trial. Evanow v. M/V Neptune, 163 F.3d 1108, 1117 (9th Cir. 1998).

21 **4. Suggestions that Defendants "Stole" the Vessel**

22 Defendants seek to prevent Plaintiff from arguing or suggesting that Defendants "stole"
23 the Vessel or disappeared with the Vessel without informing Plaintiff of its whereabouts. Dkt. #
24 101 at 9. In response to this request, Plaintiff has agreed not to argue or elicit testimony that
25 Defendants "stole" the Vessel. Dkt. # 106 at 8. With respect to Defendants' request to preclude
26 Plaintiff from arguing or offering testimony that Defendants removed the Vessel from the United
27 States without informing Plaintiff, the Court GRANTS Defendants' request. Whether

1 Defendants removed the Vessel from the United States without informing Plaintiff is not
2 relevant to whether Plaintiff unlawfully interfered with Defendants' possession of the property
3 on the Vessel, particularly in light of the parties' agreement that Defendants defaulted on the
4 loan. Defendants' fourth motion *in limine* is GRANTED.

5 **5. Documents not Disclosed During Discovery**

6 The Court GRANTS Defendants' unopposed request to exclude documents not disclosed
7 during discovery. The parties are prohibited from introducing evidence that was not previously
8 disclosed pursuant to the Federal Rules of Civil Procedure. Fed. R. Civ. P. 26; Fed. R. Civ. P.
9 37(c)(1).

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11 For all of the foregoing reasons, Defendants' motions *in limine* (Dkt. # 101) are
12 GRANTED IN PART and DENIED IN PART.¹

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14 DATED this 22nd day of January, 2014.

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17 Robert S. Lasnik
18 United States District Judge
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23 ¹ The Court notes that the findings and conclusions in this order, like all rulings *in limine*, are
24 preliminary and can be revisited at trial based on the facts and evidence as they are actually presented.
25 See, e.g., Luce v. United States, 469 U.S. 38, 41 (1984) (explaining that a ruling *in limine* "is subject to
26 change when the case unfolds, particularly if the actual testimony differs from what was contained in the
27 proffer. Indeed even if nothing unexpected happens at trial, the district judge is free, in the exercise of
sound judicial discretion, to alter a previous *in limine* ruling."). Subject to these principles, the Court
issues this ruling for the guidance of the parties.